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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.93 OF 1994

Cuttack, this the 6th day of August, 1997

Kuldeep Ketki ..... Applicant

Vrs.

Union of India and others ..... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *NO.*

*Somnath Som*  
 (SOMNATH SOM) *6.8.97*  
 VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.93 OF 1994

Cuttack, this the 6th day of August, 1997

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Kuldeep Ketki, aged about 29 years,  
son of Someswar Ketki of Hawaspur,  
PO-Hawaspur, Via-Junagarh, Dist.Kalahandi,  
at present working as Jeep Driver,  
Kalahandi Postal Division,  
Bhawanipatna,  
At-Nuapara, PO-Bhawanipatna-1,  
District-Kalahandi

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Applicant

Vrs.

1. Union of India, represented by  
its Secretary, Department of Posts,  
Dak Bhawan, New Delhi.
2. Chief Postmaster General, Orissa Circle,  
At/PO-Bhubaneswar, District-Khurda.
3. Postmaster General, Berhampur Region,  
At/PO-Berhampur, District-Ganjam.
4. Superintendent of Post Offices,  
Kalahandi Division, At/PO-Bhawanipatna,  
District-Kalahandi

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Respondents

Advocate for applicant - Mr.A.Routray.

Advocate for respondents - Mr.Ashok Misra,  
Senior Panel Counsel.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of  
Administrative Tribunals Act, 1985, the applicant has  
prayed for a direction to the respondents to regularise  
his services in the post of Driver with effect from his

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*6.8.97*

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initial appointment. There is also a prayer for interim relief that pending final decision of the O.A., the respondents should be directed not to terminate his services. But no order was passed on the prayer for interim relief. In MA No.584/96 filed on 3.9.1996 a prayer was made that the Tribunal should direct respondent no.3 to pay salary to the applicant for Saturday, Sunday and other holidays since the date of his engagement as temporary Driver. This M.A. was dismissed for default in order dated 12.9.1996. On 7.1.1997, MA No.16/97 was filed with the same prayer. This M.A. was posted from day to day for consideration. Ultimately, on 21.7.1997, it was submitted by both sides that the O.A. and M.A.No.16/97 should be taken up together. Accordingly, I have heard the counsels on the O.A. as also on the M.A. on 29.7.1997.

2.Facts of this case are that vide Annexure-1

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the applicant was appointed as Jeep Driver in Kalahandi Division with effect from 10.9.1990 to 27.9.1990 including Sundays and holidays. Case of the applicant is that he has been continuing from September 1990 till date on ad hoc and temporary basis. He has got a driving licence and is qualified to be appointed as a Driver. It is further submitted by him that Department of Posts have a scheme for regularising casual workers. Some of the Circles had asked for clarification whether the semi-skilled/skilled workers such as drivers, etc., are also required to be

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regularised in the light of the scheme and also the judgment of the Hon'ble Supreme Court. In circular dated 4.10.1988/ (Annexure-4) it has been clarified by Director-General, Posts, that for semi-skilled and skilled category, proposals should be sent to the Directorate for creation of posts for such regularising/casual workers. It has also been laid down that recruitment against the vacancies caused due to promotion, retirement, etc., may be made from amongst the drivers working on casual basis for more than one year and in accordance with the provisions of statutory recruitment Rules. It is the case of the applicant that he has put in 260 days of service during each year of engagement from 1990 and at the time of initial engagement, he was within the age limit and for these reasons, he has asked for a direction to regularise him in the post of Driver.

3. Respondents in their counter have submitted that the applicant has been performing duties of Driver since 10.9.1990, but he has never been formally appointed against the post of Jeep Driver. He is paid on daily wage basis each month and his engagement is purely temporary and ad hoc and does not confer any right on him for regular absorption. It is further submitted by the respondents that the post of Jeep Driver was created on 29.3.1990 and the first incumbent was one Balaram Pradhan who worked on daily wage basis till 31.8.1990. Thereafter

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They have also stated that he is a daily wage Driver and he cannot be regularised in Group-C post notwithstanding his long period of service on daily wage basis. The respondents have further submitted that the applicant can be appointed as a regular Driver only if he qualifies for the post and not otherwise. It has been submitted that his services cannot be regularised as regularisation can be done only against Group-D post and not against Group-C post to which category the post of Driver belongs.

4. I have heard the learned counsels for both sides and have perused the material on record. The contention of the respondents that a casual labourer working as Driver cannot be regularised is not correct in view of the circular dated 4.10.1988 in which Director-General, Posts, has directed the subordinate offices for sending proposals for creation of posts of Driver for regularising the casual workers who are working as Drivers. In this circular, it has also been mentioned that recruitment against the vacancies caused due to promotion, retirement, etc., may be made from amongst the Drivers working on casual basis for more than one year and in accordance with the provisions of statutory recruitment Rules. Thus it would be clear from this circular that a casual worker on daily wage basis which the applicant admittedly is, can be regularised in the post of Driver. In the instant case, there is already a vacant post of Driver and there is no need for creation of a post. It is also a fact that

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the applicant has been working against the post of Driver from September 1990 continuously. This itself will indicate that his work is satisfactory, otherwise he would not have been continued on daily wage basis so long. There is, therefore, a strong case for regularisation of his services. But unfortunately, the said regularisation has to be done in accordance with the Recruitment Rules and in the test the applicant has failed in Arithmetic as mentioned earlier. From Annexure-R/16, it appears that the qualifications according to the Recruitment Rules are possession of valid licence for driving light and heavy motor vehicles, <sup>and</sup> four years experience of driving light and heavy motor vehicles with at least one year experience of driving heavy vehicle. It is also mentioned that it is desirable that the candidate should have passed Middle Standard. From this, it is clear that according to the Recruitment Rules, the essential qualification is the skill in driving and experience in driving light and heavy motor vehicles. The requirement of passing Middle Standard has been noted as a desirable qualification. Thus it cannot be said that it is an essential qualification. Therefore, it would not be correct for the respondents to examine the candidates in Arithmetic to establish that they have qualification upto Middle Standard. I have gone through the Arithmetic question paper which was set in one of the interview/test (Annexure-R/10). I am afraid the standard set in Arithmetics is rather stiff if one considers the fact that the candidates would <sup>have</sup> read upto Middle Standard

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or even less and would have had lost touch with academics thereafter. In consideration of the above, I feel that the applicant has a very good case for getting his services regularised. This should be done by holding another test in which the applicant should be allowed to appear even though in the meantime he might have become over-aged. It is submitted by the learned lawyer for the applicant that at the time of his initial engagement, the applicant was within the age limit for regular appointment and this fact has not been contested by the respondents in their counter. While examining the applicant and such other candidates whose names come from the Employment Exchange, the respondents should go by the essential qualification about driving ability and experience in driving light and heavy motor vehicles. The desirable qualification may not be insisted upon because it is not an essential qualification and by insisting upon this, the respondents have not been able to select a person even though the selection process has been undertaken twice. While considering the candidates including the applicant, the past service rendered by the applicant and his conduct and behaviour should also be favourably considered. The above process of selection should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order. Needless to say that if the applicant is ultimately selected, his regular service would begin from the date of his regular appointment after selection.

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5.As regards the prayer of the applicant for getting the wages for Saturday, Sunday and holiday, it has been submitted by the respondents that no regular appointment has been issued to him over these years, but he has been only paid wages for the specific days he has worked in a month. In view of this and also in view of the order for considering his case afresh subject to the various relaxations given by me, I do not feel inclined to grant his prayer for getting wages for Saturday, Sunday and holiday from the date of his initial engagement, except for Saturday, Sunday and holidays when he has actually worked. I find from Annexure-1 that his initial order of appointment from 10.9.1990 to 27.9.1990 includes Sunday and holiday. In case on Saturday, Sunday and holiday the applicant has actually worked, then he must be paid his wages for these days. If he has not yet been paid, such payment should be made to him within a period of 90 (ninety) days from the date of receipt of copy of this order.

6.To sum up, therefore, the application is partly allowed in terms of the directions in paragraphs 4 and 5 of this order. There shall be no order as to costs.

*Somnath Som*  
(SOMNATH SOM) 6.8.97  
VICE-CHAIRMAN